

NEWPORT BEACH PLANNING COMMISSION MINUTES
Council Chambers – 3300 Newport Boulevard
Thursday, September 22, 2011
REGULAR MEETING
6:30 p.m.

A. CALL TO ORDER - The meeting was called to order at 6:30 p.m.

B. PLEDGE OF ALLEGIANCE - Led by Commissioner Ameri

C. ROLL CALL

PRESENT: Ameri, Hawkins, Hillgren, Kramer (excused delayed arrival – arrived at 6:37 p.m.) Myers, Toerge, and Unsworth

ABSENT (EXCUSED): None.

Staff Present: Kimberly Brandt, Community Development Director, James Campbell, Principal Planner, Gregg Ramirez, Acting Planning Manager, Leonie Mulvihill, Assistant City Attorney, Benjamin Zdeba, Planning Technician, and Marlene Burns, Administrative Assistant

D. PUBLIC COMMENTS - None.

E. REQUEST FOR CONTINUANCES – None.

F. CONSENT ITEMS

ITEM NO. 1 Minutes of August 4, 2011

Chair Unsworth and Commissioner Myers, having recused themselves from the items under consideration at the August 4, 2011, meeting recused themselves from consideration of the approval of the August 4, 2011, minutes. Both members left the dais and the Chamber.

Vice Chair Toerge proceeded to conduct this item.

Motion made by Commissioner Hillgren and seconded by Commissioner Hawkins, and carried (5 – 0) with two recusals (Myers and Unsworth) to approve the minutes, as amended.

AYES: Ameri, Hawkins, Hillgren, Kramer, and Toerge

NOES: None.

ABSENT(RECUSED): Myers and Unsworth

ABSTAIN: None.

Chair Unsworth and Commission Myers returned to the Chamber and took their places at the dais.

ITEM NO. 2 Minutes of August 18, 2011

Commissioner Hawkins noted that he submitted additional comments to the Planning Commission.

Motion made by Commissioner Hawkins and seconded by Commissioner Hillgren, and carried (7 – 0) to approve the minutes, as corrected.

AYES: Ameri, Hawkins, Hillgren, Kramer, Myers, Toerge, and Unsworth
NOES: None.
ABSENT(RECUSED): None.
ABSTAIN: None.

G. PUBLIC HEARING ITEMS

ITEM NO. 3 Nguyen Residence Site Development Review (PA2011-129) 1401 Dolphin Terrace

A site development review to allow for the construction of 16 caissons for safety and slope stability for an existing single-family house and accessory structures. The project would allow the proposed caissons to encroach a maximum 15 feet into Development Area C.

A staff report was presented by Gregg Ramirez, Acting Planning Manager. A PowerPoint Presentation was displayed.

Commissioner Hawkins inquired as to the tarp on the neighboring property and expressed concerns regarding slope failure in the adjacent area. Mr. Ramirez noted that the slope on the subject property has not yet failed, yet the caissons will be necessary to stabilize the slope.

Commissioner Ameri suggested that the City should do a “reconnaissance” of the slope to examine its structural integrity rather than reviewing projects on a “case-by-case” basis.

Community Development Director Brandt suggested that she coordinate with the Public Works Department in order to determine the City’s jurisdiction as related to the slope in question.

Chair Unsworth stated that ex-parte communications will no longer be requested for Public Hearings; however, in the spirit of transparency, he suggested that the Commissioners state, of their own volition, any ex-parte communications, as necessary.

Chair Unsworth opened the Public Hearing.

Peter Brando, project landscape architect, indicated that the caissons are necessary for reinforcement and slope stability.

In response to an inquiry from Commissioner Hawkins as related to the various architects involved in the project, Mr. Brando responded regarding the architectural team. Commissioner Hawkins also stated with Mr. Brando affirming, that the house was currently on stable ground.

Commissioner Ameri expressed concerns with stabilizing only certain parts of the slope adjacent to Bayside Drive, which may affect the structural integrity of the other areas of the slope.

In response to Chair Unsworth, Mr. Brando agreed with the Conditions of Approval recommended by staff for this project.

In response to an inquiry from Commissioner Toerge regarding the construction method, Mr. Brando stated that the construction of the project will likely occur from the patio side of the project.

Chair Unsworth closed the Public Hearing.

Motion made by Commissioner Hillgren and seconded by Commissioner Hawkins, and carried (7 – 0) to Approve Site Development Review No. SD2011-001, to allow the proposed caissons, subject to the findings and conditions of approval in the draft resolution.

AYES: Ameri, Hawkins, Hillgren, Kramer, Myers, Toerge, and Unsworth
NOES: None.
ABSENT(RECUSED): None.
ABSTAIN: None.

ITEM NO. 4 Alternative Setback Determination (PA2011-149)
1400 East Ocean Front

The applicant is requesting an alternative setback determination for property located at 1400 East Ocean Front to accommodate redevelopment of the site. The applicant is requesting that the following setbacks be established:

- Front (Along East Ocean Front) – 10 feet
- Sides – 3 feet
- Rear (Opposite East Ocean Front) – 3 feet

A staff report was presented by Benjamin Zdeba, Planning Technician. A PowerPoint Presentation was displayed.

Commissioner Hawkins suggested that a Resolution would be the appropriate mechanism by which to approve this project. Gregg Ramirez stated that “findings” were not legally necessary for this type of approval; however, staff would draft a Resolution if the Commission provided such direction.

Assistant City Attorney Leonie Mulvihill noted that the Commission has the discretion to make findings related to this item.

Chair Unsworth opened the Public Hearing.

Chris Brigandi, applicant, requested memorialization of the setbacks on the site property in order to commence construction.

Rolando Hidalgo filed a two (2) page objection to this project, cited various sections of the Zoning Code, and displayed visual aides which allege that the requested setbacks for the subject property are not consistent with the surrounding pattern of development prescribed by the Zoning Code.

Robert Larner, resident, expressed support for Mr. Hidalgo’s remarks. Mr. Larner identified his property as being adjacent to the subject property on the visual displays in the Chamber.

In response to Commissioner Hawkins’ inquiry as to the rationale for his objection, Mr. Larner expressed his opinions relative to the impacts of the project on his property.

Chris Brigandi, applicant, explained that the property is a forty (40) foot lot and the setbacks are similar to the adjacent property’s setbacks at 1412 East Ocean Front.

In response to an inquiry from Commissioner Hawkins, Mr. Brigandi stated that his lot is forty (40) feet wide, and the lot at 1412 is thirty-five (35) feet wide.

Chair Unsworth closed the Public Hearing.

Commissioner Ameri inquired as to the methods utilized for the review of the setback requests. Benjamin Zdeba, Planning Technician, commented that inconsistencies between adjacent Floor Area Ratios (FAR) and setbacks were considered and stated that maximum floor area is a function of the lot size.

Commissioner Toerge requested that the side yard setbacks be three (3) feet each and the front and rear yard setback be ten (10) feet each.

Commissioner Hawkins stated he was in support of staff's recommendations as the properties at both 1412 and 1400 are affected by the drive aisle, and that a Resolution was not necessary as he previously had mentioned. He confirmed his support of the three (3) foot setback and moved to approve this time as recommended.

Motion made by Commissioner Hawkins and seconded by Commissioner Kramer, to approve staff's recommendation with the alternative setbacks as presented.

Substitute motion made by Commissioner Toerge and seconded by Hillgren to approve Alternative Setback No. SA2011-019 with the attached Alternative Setback Determination letter and modified rear setback of ten (10) feet with the recommended front setback of ten (10) feet and side setbacks of three (3) feet on the East and West side. The substitute motion carried (4 – 3).

AYES: Ameri, Hillgren, Myers, and Toerge
NOES: Hawkins, Kramer, and Unsworth
ABSENT(RECUSED): None.
ABSTAIN: None.

Community Development Director Brandt announced that this decision becomes final within fourteen (14) days unless appealed to the City Council.

ITEM NO. 5 MacArthur at Dolphin-Striker (PA2010-135)
4221 Dolphin-Striker Way

The applicant proposes a planned community development plan amendment to allow the construction of two, single-story commercial buildings with 13,525 combined square feet.

The following approvals are requested or required in order to implement the project as proposed:

1. An amendment to the Newport Place (PC-11) Planned Community Development Plan to change the zoning designation of the subject property from "Restaurant Site 1" to "General Commercial Site 8", pursuant to Chapters 20.56 (Planned Community District Procedures) and 20.66 (Amendments) of the Municipal Code.
2. Transfer of Development Rights to allow the transfer of 48 unbuilt hotel units, which equate to 3,909 square feet of specialty retail, from Hotel Site 2-B (Fletcher Jones Vehicle Storage Facility at 1301 Quail Street) and 1,620 square feet from General Commercial Site 7 (Lexus Dealership at 3901 MacArthur Boulevard) for a total of 5,529 square feet to the subject site, pursuant to Chapter 20.46 (Transfer of Development Rights) of the Municipal Code.
3. Traffic Study approval pursuant to Chapter 15.40 (Traffic Phasing Ordinance) as the project will generate in excess 300 average daily trips (ADT).

A staff report was presented by James Campbell, Principal Planner, and a PowerPoint Presentation was displayed.

Commissioner Hawkins confirmed with Mr. Campbell that there are currently two (2) access points, one (1) driveway off Dolphin Way, and one (1) driveway off Martindale. There is also a cooperative agreement among three (3) properties for parking and access.

In response to an inquiry from Commissioner Hawkins related to donor sites, Mr. Campbell stated that consent is not necessary from the donor sites; however, staff would prefer consent so there would be no objection. In addition, Mr. Campbell stated that there are three hundred and four (304) units remaining at the Fletcher Jones site and that these units would generate occupancy tax if built.

Commissioner Hillgren stated that the number of access points to the commercial properties seems small and that MacArthur was designed such that the abutting properties were not to take direct access from the highway. In response to an inquiry from Commissioner Hillgren relative to the proposed driveway, Mr. Campbell stated that the applicant's proposal includes retail components that would benefit from having driveway access to MacArthur. Mr. Campbell went on to note that intent to prohibit direct vehicular access to MacArthur was not memorialized in the Newport Place Planned Community but it could be inferred that it was the intent given the current lack of direct access.

Commissioner Hawkins expressed concerns regarding the proposed left turn, stated that he spoke with applicant and visited the site, and spoke about safety concerns in the parking lot, as well as the backing up of traffic on MacArthur. Mr. Campbell described the variety of gaps in access on MacArthur that would allow for a left turn.

City Traffic Engineer Tony Brine responded to a number of questions related to direct access to the project site from MacArthur Boulevard.

Commissioner Hawkins indicated that the proposed one-year off-site parking agreement is not what the Zoning Code requires in that it does not provide permanent availability of the parking spaces. In response, Mr. Campbell indicated that the Conditional Use Permit requires the applicant to permanently provide the parking spaces. The proposed parking plan would be effective for one (1) year given the term of the off-site lease, but the applicant would have to provide a new lease, potentially at an alternative site subject to the review and approval by the Director.

Commissioner Hawkins requested that the Conditions of Approval reflect that this project makes the parking plan permanently available rather than having a Condition that requires the plan to be reviewed annually.

Chair Unsworth estimated that a direct path from Dolphin/Striker to MacArthur would result in creating more of a thoroughfare.

In response to an inquiry from Commissioner Toerge relative to the permanent parking issue, Mr. Campbell stated that the applicant would have to advise the City of any loss of off-site parking and how it would be replaced. In the worst case if the lost off-site parking could not be provided, the applicant could reduce the intensity of use to comply with minimum parking standards. Commissioner Toerge expressed concerns relating to how the City would advise an applicant who has invested a significant amount in developing their property that they must reduce the intensity of use of their property because of a lack of parking.

Commissioner Ameri provided comments on his perspective relative to the original concept of MacArthur Boulevard and that it was intended as an arterial without direct vehicular access to individual parking areas. He expressed concerns that opening one access point for one project would ruin the intent and suggested extending Dolphin-Striker through the site creating a new roadway access point at MacArthur.

In response to an inquiry from Commissioner Hawkins relative to his concerns about the traffic impacts, Mr. Campbell mentioned that the General Plan does not envision MacArthur to become a pedestrian friendly street, given the volume of traffic.

Commissioner Hawkins expressed concern over the Director's discretionary authority over the one (1) year parking agreement, which was not a permanent plan, and that the City would have a series of one (1) year off site parking agreements not contemplated by the original study.

In response to an inquiry from Commissioner Myers relative to the differences between the access points at the nearby Newport Beach Lexus dealer, Mr. Campbell stated that that there are no left turns into that site and that there is no exiting. He further stated that each driveway request would be considered independently so that they do not inadvertently create hazards, preclude future requests, or if approved, there would be no precedents sets for future approvals.

Commissioner Ameri suggested that the access point allow pedestrian access or extend the cul-de-sac to create another street intersection.

Chair Unsworth stated that without the reciprocal parking agreement the project is eight (8) spaces short, and with the reciprocal agreement it is only one (1) short.

Chair Unsworth suggested that Condition Number 7, relative to the alternative off-site parking agreement, should have a requirement of being recorded with the County Recorder and that a finding of substantial conformance with the permit would have to be made. Community Development Director Brandt stated that any finding of substantial conformance with the permit would be provided in the weekly Planning activity report.

Ms. Brandt also stated that in regard to Condition No. 9, any significant changes, would be referred back to the Planning Commission.

In regard to inquiries made by Chair Unsworth relative to Conditions 10 and 49, Ms. Brandt stated that the intent of the application was to have all employees parking off site at all times, and that although the Planning Commission has no jurisdiction over sprinklering those requirements will be reviewed through the plan check process.

Chair Unsworth opened the Public Hearing.

Tod Ridgeway, applicant, provided a general overview of the project, that the MacArthur arterial has changed significantly over the past twenty (20) years, the proposed access point was popular and approved by the Police and Fire representatives, a restaurant presence was required for the project, the parking structure would be managed by AMCO, and that there is a current deficiency of thirteen (13) spaces. Mr. Ridgeway mentioned that he will require all employees to park in the structure, that his insurance requirements state that the project must be sprinklered, and that he is not contemplating a residential component to this project. In conclusion, he would live within existing community text, will go immediately to AMCO and have them amend an agreement to be a recordable document, and if terminated, there would be a notice provision to the City of Newport Beach.

In response to an inquiry from Chair Unsworth relative to the massing of the project, Mr. Ridgeway stated that he does not contemplate building a six story building and that an alternate parking plan would require him to change his uses of which he is not planning on doing.

In response to inquiries on various aspects of the project made by Commissioner Hawkins, Mr. Ridgeway noted that he agreed with Condition No. 10 and that he would be comfortable with adding a notice provision to the City of Newport Beach. He did express that he was not in agreement with restricting the MacArthur access to a right turn in and right turn out.

In response to an inquiry from Commissioner Hawkins regarding the waiver of development rights, Mr. Ridgeway stated that he does not have any intention of building hotel units. Commissioner Hawkins did state that someone else could use the units as part of a transfer to their project and that the City, if, could potentially lose this course of occupancy tax since the hotel units would not be built.

Community Development Director Brandt stated that Condition 2 should be deleted as the transfer of development rights agreement would be more appropriate if there were a vested property right on the donor properties. Mr. Ridgeway affirmed that this deletion would be acceptable.

Tod Stoutenborough, project architect, made a brief presentation, mentioned that he had worked significantly with the Traffic Engineer and noted that MacArthur had been designed for four (4) lanes of traffic. He mentioned a deceleration lane and acceleration lane, could still maintain three (3) lanes, and there was plenty of visibility and ease of access to the project.

Commissioner Myers, after reviewing the striping of the road exhibit, expressed support for a left hand turn lane.

Commissioner Ameri stated support for the project, with the exclusion of the driveway. He proposed widening the drive aisle to create a street, or to extend Dolphin-Striker and connect it to MacArthur. Commissioner Ameri also envisioned a pedestrian connection.

In response to an inquiry from Commissioner Hawkins relating to the project design, Mr. Stoutenborough detailed the modern design elements of the proposed development and indicated they would be compatible with adjacent projects.

Dan Purcell, resident, requested that the Planning Commission ensure that all aspects of this project and the applicant's proposal be memorialized in such as way as to avoid any potential for deviation from the original project as submitted.

Chair Unsworth closed the Public Hearing.

Mr. Ridgeway stated that he believed the public speaker's comments were directed to the previous owner's nightclub operation and not the proposed project.

Motion made by Commissioner Ameri and seconded by Commissioner Hawkins, for discussion purposes, to approve the project as submitted with the additional Condition to modify the site plan to either: 1) Reflect a through street to MacArthur or 2) creating pedestrian access from MacArthur to the project site.

In response to an inquiry from Commissioner Hawkins, Mr. Brine stated that the City did not have the jurisdiction to require a public roadway through the site.

Commissioner Hawkins stated that if the City is conditioning a project to have a road, it is no longer a private roadway, and that it would be a public roadway for which there would be payment of just compensation.

Community Development Director Brandt stated that the imposition of this type of condition would require a significant redesign of the project and would recommend that the Planning Commission make a motion to deny the project as submitted.

Commissioner Ameri did not withdraw his motion. Second to the motion was withdrawn by Commissioner Hawkins.

The motion failed due to lack of a second to the motion.

Commissioner Toerge expressed the following concerns with the project: 1) the transfer increases the development intensity resulting in the need for a parking waiver and modification permit for deviations from the required 2) the one-year duration of the off-site parking agreement does not comply with the code requirements that it be available permanently and 3) the proposed access from MacArthur is inconsistent with the existing design.

Motion to deny based upon inability to make the findings made by Commissioner Toerge and seconded by Commissioner Hawkins for discussion purposes.

Commissioner Hillgren stated that he does want to encourage redevelopment of the property as long as the uses are appropriate and right for the area, and that his only concern with the project as presented was that the uses were just too intense. He stated that the project would create a significant traffic challenge and danger and that he supports redesign of the project to avoid the access point on MacArthur.

Commissioner Hawkins agreed that the site is underutilized; however, he did state that when “Fury Rock and Roll” was at this site there was no need for an access point and people found the location easily. He also stated his concerns with transferring income generating units to this site.

Commissioner Kramer supported the project as presented, as he did not have a problem with the parking, and could easily make the finding that the MacArthur corridor does not have the same standing as it did prior. Commissioner Kramer stated that for the overall good of the community/city and for local businesses/residents, this project should be approved.

Substitute motion made by Commissioner Kramer and seconded by Commissioner Myers to approve the project, as recommended by staff.

Chair Unsworth agreed with the maker of the alternative motion that the motion language would include the following amendments to the proposed Conditions as articulated by Community Development Director Brandt:

- Condition No. 2 – deleted
- Condition No. 7 (handwritten page 73) modified to include a notice provision of any termination of the long term availability of the off-site parking requirements require the require notification to the Community Development Director
- Condition No. 8, corrected to state, “....in the event of loss of off-site parking”

In response to an inquiry from Chair Unsworth regarding clarification of “footnote 36” Commissioner Hawkins confirmed staff’s report that this referred to the number of times the PC text had been amended.

In response to an inquiry from Chair Unsworth regarding matters relative to Conditions 6 through 9, Community Development Director Brandt stated that if a finding of substantial conformance was made, the item would be included in the weekly report.

Community Development Director Brandt also noted that if the application was approved and sent forward to the City Council, the condition language item related to "prior to final" would be corrected to reflect plain English.

These amendments were acceptable to Commissioner Kramer, the maker of the substitute motion.

The substitute motion failed (4 - 3).

AYES: Kramer, Myers, and Unsworth
NOES: Ameri, Hawkins, Hillgren, and Toerge
ABSENT(RECUSED): None.
ABSTAIN: None.

Motion to deny based upon inability to make the findings made by Commissioner Toerge and seconded by Commissioner Hawkins, and carried (4 – 3) to deny approval of the project.

AYES: Ameri, Hawkins, Hillgren, and Toerge
NOES: Kramer, Myers, and Unsworth
ABSENT(RECUSED): None.
ABSTAIN: None.

Community Development Director Brandt stated that the approval to deny the project was final subject to a fourteen (14) day appeal period.

H. NEW BUSINESS: None.

Commissioner Hawkins suggested a report in connection with Corona Del Mar bluff conditions.

Commissioner Toerge did not support a study in that location.

Commissioner Ameri suggested writing a letter to the homeowners notifying them of some problems relative to the slope conditions so that the City could go on record as being aware of the slope conditions; however, not being responsible for the conditions.

Assistant City Attorney Mulvihill stated that the City's position would not support such a recommendation and would put the City in the position of evaluating private property rights.

Commissioner Ameri withdrew his recommendation.

Discussion ensued among Commissioner Hillgren, Commissioner Toerge, Commissioner Ameri, Commissioner Hawkins, and legal counsel relative to the volume of paperwork given to members of the Commission related to their review of project staff reports and supporting documentation.

Assistant City Attorney Mulvihill stated that as part of the official record all documents must be transmitted to the legislative body.

I. STAFF AND COMMISSIONER ITEMS

ITEM NO. 6 Community Development Director's report.

Community Development Director Brandt advised of the proposed public study session with the Planning Commission relative to the Newport Banning Ranch project. The study session will be held during the sixty (60) day review period and the date of November 3, 2011, was suggested. The intent of the study session was to educate the public about the environmental review process, give an overview of the project, and explain the entitlement process and the actions required by the County, Coastal Commission and LAFCO.

Commissioner Hawkins suggested an earlier start time for the November 3, 2011, meeting such as 4:30 p.m.

Ms. Brandt stated that public comment would be allowed and that the study session was not intended to be a long meeting.

In response to an inquiry from Commissioner Kramer relative to the update on the two (2) Newport Beach Country Club project applicants, Ms. Brandt stated that staff would be moving forward at the October 20, 2011, meeting with both applications. She also mentioned that staff has met several times with applicants relative to direction given by the Planning Commission and that staff has "mapped out" some direction for the Planning Commission as to how to take action relative to the two (2) applications.

In response to an inquiry from Commissioner Hawkins relative to the Lido Village Design Guidelines Public Hearing, Ms. Brandt stated that the Planning Commission's role is to review and give comments on design guidelines, which will be adopted by the City Council as a supplemental document to be used in conjunction with development in the Lido Village Area. A community workshop/business advisory meeting is scheduled for October 6, 2011, in the Lido Village Area and the final draft document will be forwarded to the Planning Commission for review.

Commissioner Hawkins, inquired as to what the standard for guidelines would be and if it would be consistency with the Zoning Code and the General Plan. Ms. Brandt noted that these are not code changes, and are only intended to supplement the code review process as a vision for the area.

In response to an inquiry from Commissioner Kramer, Ms. Brandt provided a status report on the Port Theatre, noting that the interior work is underway; however, there is no firm final completion date.

By unanimous consensus, the Commission agreed to begin the November 3, 2011, study session at 4:30 p.m.

Community Development Director Brandt updated the Commission regarding upcoming agenda items and recent actions reviewed by the City Council at their meetings.

ITEM NO. 7 Announcements on matters that Commission members would like placed on a future agenda for discussion, action, or report.

None.

ITEM NO. 8 Request for excused absences.

None.

ADJOURNMENT – The Planning Commission meeting adjourned at 9:43 p.m.